

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 26, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused:

Sen. Bob Keenan (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 474, 3/4/2003; HB 230,
3/4/2003; HB 525, 3/4/2003
Executive Action: HB 230, HB 474, HB 230, HB 130

HEARING ON HB 474

Sponsor: REPRESENTATIVE SANDY WEISS

Proponents: Robert Warden, Enterprise Rent-a-Car

Opponents: NONE

Informational Witnesses: NONE

Opening Statement by Sponsor:

REPRESENTATIVE SANDY WEISS, HD 13, Billings, read the title of the bill. She said it clarifies the law for bankruptcy, court decisions, and keeps the cost of TRAC leasing low for the leaser. She said it makes the law uniform and consistent throughout the United States where 40 other states have already enacted this legislation. She listed a number of the proponents to this bill. She said TRAC legislation is designed to end wasteful litigation by recognizing the true lease status of TRAC vehicles. She passed out a letter of support from Watkins and Shephard Trucking **EXHIBIT (bus64a01)**. She also passed out other letters of support for **HB 474 EXHIBIT (bus64a02)**.

Proponents' Testimony:

Robert Warden, Enterprise Rent-a-Car, rose in support of **HB 474**.

Questions from Committee Members and Responses:

There were no questions posed by Committee members on this bill.

Closing by Sponsor:

REP. SANDI WEISS said this is a clarification to state law to make it more economical for a lessee to recover values of vehicles and to protect both parties in case of a bankruptcy. She urged support.

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HEARING ON HB 230

Sponsor: REPRESENTATIVE RON ERICKSON

Proponents: Bill Woody, Nightingale Nursing

Dan Keith, Home Health of Montana

Opponents: **NONE**

Informational Witnesses: **John Andrew, Department of Labor and Industry (DLI)**

Opening Statement by Sponsor:

REPRESENTATIVE RON ERICKSON, HD 64, Missoula, provided an example of a person serving on an interim committee who has to fill out a form so they can get their salary and per diem. The person forgets to fill out the form, and a week later turns it in and wants a check cut right then. The payment office will deny the check to be cut right then because it will come out the next payday. However, current law says they are supposed to cut the check. He said this bill says that if a person turns in their time sheet late they will get paid the next time there is a payday. He said this is a management bill.

Proponents' Testimony:

Bill Woody, Nightingale Nursing, said they employ about 700 people in-home care and their employee schedules are very sporadic and often times they will get time sheets in and they will have to run over 30 pay roles in one quarter. He said this causes problems with meeting federal tax deposit deadlines, etc. He said this bill would help them and urged support.

Dan Keith, Home Health of Montana, said it could be quite expensive when people come in and expect to have a check cut right away. He said they do payroll every two weeks and this bill would eliminate having to cut a check the same day.

Informational Witnesses:

John Andrew, DLI, said Sections 2 and 3 are being stricken from the bill. He said other sections of Montana law deal with employees who have to be paid when they quit or are terminated.

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Questions from Committee Members and Responses:

SENATOR MIKE SPRAGUE asked how would termination of employment be handled. **Mr. Andrew** said current law says if employment is

terminated the wages are paid immediately or they are paid the following pay period.

SEN. VICKI COCCHIARELLA asked if this would conflict with any union contracts. **REP. ERICKSON** said no he did not know of any.

Closing by Sponsor:

REP. ERICKSON urged support of the bill.

HEARING ON HB 525

Sponsor: REPRESENTATIVE JIM, KEANE, HD 36, BUTTE

Proponents: Jeff Essmann, Self; Dick Garrett, Capital Laundry, Ron Ehli, Bitterroot Laundry and Dry Cleaners in Hamilton; Joe Mazurek, Montana Textile Services Association; Jim Brown, Business Standards Division, Department of Labor and Industry

Opponents: Mike Burke, licensed stationary engineer; David Serba, Smurf and Stone; Preston Jones, Local 885, Carl Murphy, Smurf and Stone Container; Jim Robbins, first-class operator and supervisor of boiler operators

Opening Statement by Sponsor:

REPRESENTATIVE JIM KEANE, HD 36, BUTTE, said this is a boiler-licensing bill. He said he has had several low-pressure boiler operators come to him with concerns about how licensing is handled. He said currently there are five classes of boiler licensing and low-pressure licenses represent over half of the state. He said over the years as boilers have decreased it has been difficult to get new people into boiler licensing. He said they felt the regulations needed to be easier to get more people into licensing. He explained page 1, line 27 and line 30. He said one of the problems that they had was with Class 1 and 2, which is the extremely high-pressure boilers, because they were also included in the bill. He said they took them out of the bill and they are exempt. He said this bill deals with Class 3 for the laundry people, and lower classes for the low pressure and agriculture people. He explained page 3 of the bill and said they have to take a test along with 40 hours with a licensed boiler operator who signs off that they are capable of running a boiler. He said this allows easier access for people to get into the lower class licenses.

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Proponents' Testimony:

Jeff Essmann, Self, said he is dry-clean owner and operates six boilers. He explained how a boiler works and the operation of it. He said boiler inspectors do a good job on inspecting them and putting in upgrades, etc. He said this technology is safe with proper classroom coursework and a weeks worth of work under a licensed operator. He felt it would be good policy to increase the options for being able to get a license.

Dick Garrett, Capital Laundry, Helena, said originally when the law first came about almost all boiler operators were third class. Then they changed the law and most boiler operators became second-class operators, which takes two additional years of study. He said in most rural areas they do not have access to a second-class operator to train people or to sign them off and most cannot afford to hire someone who is a second-class operator. He said the opponents would argue that they devalue their license by making it easier to get in on the bottom level and he felt that was not the case. He used the example if he had to sell his business he would have to tell the new owner that he would have to stay on an additional two years and help them to get their license. He felt this bill was a compromise by making it easier for small businesses to get a license, the unions have their career steps, public safety is benefited and the labor department gets a regulation that they can actually enforce.

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Ron Ehli, Bitterroot Laundry and Dry Cleaners in Hamilton, said he has a class three-boiler license and is out of compliance with the law. He said he has people working at his plant that are qualified and in compliance but by changing this law it makes it easier for everyone to stay in compliance. He said he does not run any of his boilers at 150 pounds but they are plated to run that. He said he is in compliance with a class three boiler as far a pressure goes but not with his license. He said if they enforce the current law it would require him and his staff to become second-class and this is prohibitive for him from a financial standpoint because he is a mom and pop shop.

Joe Mazurek, Montana Textile Services Association, said most boiler owners and workers are out of compliance with the current law and most of those laws have been on the books since 1895 with very little change since. He felt current law did not recognize the changes in technology and safety development. He said the requirements are unrealistic for a small business in Montana to be able to send people for training for two years to be licensed. He felt this bill provides a reasonable solution with a test and on the job training. He explained section 1 of the bill. He said

it was decided that they should use the faceplate capacity on the boilers rather than what they were being operated at to determine the class they were in. He said to get a class 3 license it is 6 months of on the job training under a licensed engineer of class 3 or higher. He said to get a class 2 license it is one or two years of on the job training. He said it makes it very difficult for small businesses to find the time to train these people. He said most states have moved away from lengthy experience requirements. He said this bill does not change the inspection requirements for boilers. He stated the real problem is there has to be an engineer on site anytime there is a boiler operating. He said these people want to be able to have other employees demonstrate their competency through a process supervised by the department. He said it would encourage these facilities to have more than one operator. He passed out a sheet explaining the number of boiler inspections and the number of licensed persons in each class. **EXHIBIT (bus64a03)** He said every boiler is supposed to have an operator, however right now it is about 2 boilers per licensed operator and this is in violation in the law.

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Jim Brown, Business Standards Division, Department of Labor and Industry, felt it is a reasonable and realistic approach to a problem that exists especially in rural Montana. He said this bill addresses boiler operator licenses only and does not change the inspection of boilers and does not change the requirements for first and second-class operators. He said there is the requirement of a written examination and a training course and a sign off by a licensed operator. He felt that the ratio between the number of boilers and operators was 40 percent or less of the people qualified to run these boilers.

Opponents' Testimony:

Mike Burke, licensed stationary engineer, said the training and time requirements in this bill is grossly inadequate and has the potential of being dangerous for owners, operators and the public at large. He said he would not hire anyone at this level of training to operate any boiler that he was responsible for. He said if employers are having a hard time finding employees perhaps they should look at pay and incentives. He felt another remedy could be in-house apprenticeship programs. He said there was testimony that the code had not been revised since the late 20th century, however it has been revised many times. He handed out the licensing requirements for stationary and marine engineers in the United States and Canada. **EXHIBIT (bus64a04)** He also turned in the 2001 National Board Incident Report. **EXHIBIT (bus64a05)** He said he was also concerned with the pressure

reading of third class licenses. He said raising the limit to 150 pounds would effectively include a whole list of boilers that are currently classified as second-class. He said he would like the Legislature to request from the licensing bureau that an advisory board take a look at the entire code and come up with different options.

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David Serba, Smurfit and Stone, said there are many safety features on these boilers but he has seen two explosions where safety features didn't work. He said this is one of the main reasons for extensive training of these boilers to limit accidents, etc. He felt that he would never fire a 150-pound boiler with only 40 hours of training. He said the boiler that he fires is at 600 pounds but the faceplate says 900 pounds. He said the apparatus going into the boiler cannot handle 900 pounds of pressure, etc. and there are a lot of complicated things to know with these boilers. He said safety is such a big issue and if people don't know what they are doing it can cause explosions, etc. He said if this were changed it would also change their labor negotiations around the state.

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Preston Jones, Local 885, said he was on the training program for Smurfit and Stone for boilers and what he learned could not be done in 40 hours.

Carl Murphy, Smurfit and Stone Container, rose in opposition of HB 525. **EXHIBIT**(bus64a06)

Jim Robbins, first-class operator and supervisor of boiler operators, said this bill deals with pressure but not with volume. He said volume deals with pounds per hour of steam. He said by changing the law to raise a third class license to 150 pounds of pressure and putting that person, who has had only 40 hours of training, they will be dealing with 100,000 pounds of steam volume per hour. He said many small operators are by themselves when running a boiler and when things go wrong without the proper training they are putting themselves in a lot of danger.

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Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA directed her question to **Mr. Robbins**. She wanted to know if he knew of any way to amend this bill to

cover the small business operators. **Mr. Robbins** said yes he felt there were ways to cover the small business situation without jeopardizing large boiler operations.

SEN. COCCHRIARELLA asked what size boilers are in schools. **Mr. Robbins** said they are usually low-pressure hot water boilers but they are just as dangerous as steam boilers. He said they are usually operated by third class and low-pressure boiler operators.

SEN. COCCHRIARELLA asked what is volume vs. pressure and what is the distinction between a second and third class operator. **Mr. Robbins** said the state law deals only with pressure and not with volume or size. He said 40 hours of time is not enough experience for someone to operate a boiler.

SEN. KELLY GEBHARDT asked how many horsepower is a 100,000 pounds of steam at 150 pounds of pressure. **Mr. Robbins** said only small boilers have horsepower and when they talk about horsepower to volume of steam they drop the horsepower rating off.

SEN. KEN HANSEN wanted to know why this bill was before them and was it because of the lack of people or pay incentives, etc.

REP. KEANE said it is not just the laundry business because there are many low-pressure operators such as schools, hospitals, etc. He said the high-pressure opponents to this bill are exempted out. He said they need more people to operate these boilers and 40 hours is acceptable because they also have to take a certified test from the department. He explained page 3, line 29 and said they don't have to be signed off at 40 hours.

SEN. HANSEN asked if they had someone who took care of three schools would he be out of compliance. **REP. KEANE** said yes under current law but this would be a way to get more people hired so they weren't out of compliance.

SEN. SPRAGUE used the example of a car wash that is not manned and would they be out of compliance. **Bill Jellison, Building Code Bureau, Department of Labor and Industry**, said yes.

SEN. SPRAGUE asked about the fixed boiler base. **Bill Jellison** said the only boiler in a car wash is the one that heats the slab to keep it from freezing but it is not a boiler it is a water heater.

SEN. SPRAGUE said those little heaters are inspected every year by the state and is there a cost for that. **Bill Jellison** said yes it is \$56 every other year. He said the present license requirement for boiler operators does not just encompass the

large sawmills, etc. He said it encompasses those people who own car washes, gift shops, restaurants and anything that has a boiler in it. He said this bill allows those people some latitude and the ability to be in compliance.

SEN. SPRAGUE asked if they could amend this bill so that they would not have to stand over that boiler all the time, etc. **Bill Jellison** said a better solution is to address the definition of supervision of the boiler at the administrative rule level. He said it is not intended that someone stand at an automatically fired boiler at a car wash, etc.

SEN. COCCHIARELLA questioned **Mr. Serba** if he thought adding criteria to the bill regarding volume and who is third class would take care of this problem. **Mr. Serba** said no he did not think so because the boiler that he fires puts out 485,000 pounds of steam per hour and they have a hog fuel boiler that puts out 400,000 pounds of gas per hour, etc. He said when they discuss pounds per hour and horsepower they are talking about different amounts of pressure and it can be adjusted depending on the firing rate, etc.

SEN. COCCHIARELLA asked if there was someway in which third class people could be trained and there could be pounds per square inch in which first and second-class could be separated out. **Mr. Serba** said they would have to change the pressure requirements for the classes because some may be firing at 100 pounds and at other times it would be above that. He said the biggest issue here is the training. He felt that restaurants and car washes fall under a different classification in the law and he didn't feel they were out of compliance.

{Tape: 2; Side: B; Counter: 3.0}

CHAIRMAN DALE MAHLUM referred to a statement made by **Mr. Serba** about the boiler that he operates is at 600 pounds but has a face plate of 900 pounds but that it cannot handle that and is the manufacturer lying. **Mr. Serba** said no, the boiler itself can handle 900 pounds but when the steam comes out of that boiler it is the other equipment that cannot handle that steam.

SEN. HANSEN asked **Mr. Serba** if there is continuing education in this field. **Mr. Serba** said yes where they work, organized labor, puts on continuing education. He said in their company it is a line of progression where everyone starts out at third class and they work their way up to first class. He felt that small businesses could set up a training program with the state because those boilers in schools, etc. are just as dangerous as high pressure boilers in other businesses.

SEN. COCCHIARELLA referenced the condition of most of the boilers in Montana and the improvement of technology with regards to allowing less training for operators of these boilers. **Mr. Jellison** said in February 1996 the department adopted CSD-1, which is controls and safety devices for boilers. He said these are the controls that are required on all boilers today with those safety features.

SEN. COCCHIARELLA asked if there are any old boilers operating without this. **Mr. Jellison** said if the boiler was in place prior to 1996 it only needs to meet those requirements and if they are put in afterward they have other requirements, etc., but they all have appropriate safety devices.

{Tape: 2; Side: B; Counter: 11.2}

SEN. COCCHIARELLA asked if this constituted a reason to be less trained. **Mr. Jellison** said somewhat because the apparatus has more safety devices and it is controlled electronically.

SEN. SPRAGUE read line 6 in which it says it does not apply to first and second class. **Mr. Jellison** said that is right, they are only talking about lower pressure boilers.

SEN. SPRAGUE asked if an owner-operator would have the tendency to buy a higher-pressured boiler even though it is not operated at the higher capacity. **Mr. Jellison** said that is exactly right because boilers have gotten smaller and more efficient and this causes a problem for boiler operator licensers if this alternative provision is not put in here where people can upgrade their license.

SEN. CAROLYN SQUIRES requested of **Mr. Jellison** information on his guarantee that there would not be a reduction of training and requirements for first and second class. **Mr. Jellison** said they are not in the bill and the department is not interested in lessening the requirements for first and second class.

SEN. SQUIRES asked if a third class operator has a boiler blow up and it kills him is there any difference when a boiler blows up and kills a first class boiler. **Mr. Jellison** said boiler operator error is boiler operator error irregardless of class.

CHAIRMAN MAHLUM asked **Mr. Garrett** if he is the person that regularly fires his boiler. **Mr. Garrett** said most of the time but he does have another operator also.

SEN. SQUIRES asked why are they doing it this way vs. dealing with the inspector and making sure everyone is qualified, etc.

REP. KEANE said the rules are the problem not the inspector.

SEN. SQUIRES asked if they could go to the rulemaking authority rather than doing all of this. **REP. KEANE** felt this was a fair way to deal with the problem.

Closing by Sponsor:

REP. KEANE reiterated that this bill does not change anything with regards to first and second-class boilers. He said safety is the issue here and there are several boilers out there but not enough people licensed to run them. He said if there is going to be a license in place they have to have a fair way for a person to get that license and it has to be reasonable. He said this affects school districts, hospitals, etc. He said if the pressure of 150 pounds is an issue it could be changed to 130 pounds, etc. He said this bill would get more people into an industry that needs licensed workers and the department, businesses and part of the labor unions are supporting it.

{Tape: 2; Side: B; Counter: 22.2}

EXECUTIVE ACTION ON HB 230

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 230 BE CONCURRED IN. Motion carried 10-0.

EXECUTIVE ACTION ON HB 474

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 474 BE CONCURRED IN. Motion carried 10-0.

EXECUTIVE ACTION ON HB 667

Motion: **SEN. COCCHIARELLA** moved the amendments for HB 667 **EXHIBIT** (bus64a07) HB066704.ajm.

Discussion: **Eddye McClure, Legislative Staffer,** explained the amendments.

Vote: Motion carried 10-0.

Motion: **SEN. COCCHIARELLA** moved that HB 667 BE CONCURRED IN AS AMENDED.

Vote: Motion carried 10-0.

{Tape: 3; Side: A; Counter: 5.3}}

EXECUTIVE ACTION ON HB 130

Motion: SEN. ANDERSON moved the amendments for HB 130,
EXHIBIT(bus64a08) (HB013007.aem) .

Discussion:

Eddye McClure, Legislative Staffer, explained the Gray Bill,
EXHIBIT(bus64a09)

CHAIRMAN DALE MAHLUM asked the sub-committee if they had anything to add. **SEN. SHERM ANDERSON** commented that the interested entities worked hard on the bill and they came to a consensus. He said basically they added all the amendments that the sponsor asked for.

SEN. VICKI COCCHIARELLA said she hoped new section 4 was not going to send a message to insurers that now the only thing they have to pay in a timely manner was the \$2500 or less. She felt they were addressing one or two insurers that abuse their small businesses in Montana and she hopes this will work. She said she hopes they are not encouraging delayed or non-payment on their larger claims.

Vote: Motion carried 8-2 with **SEN. COCCHIARELLA AND HANSEN** voting no on the amendments.

Motion: SEN. GEBHARDT moved HB 130 BE CONCURRED IN AS AMENDED.

Vote: Motion carried 9-1 with **SEN. COCCHIARELLA** voting no.

ADJOURNMENT

Adjournment: 11 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus64aad)